

ESTABLISHING REAL ESTATE TRUST ACCOUNTS

This guideline has been prepared because routine audits, inspections, and office visits in the field continue to indicate that there is confusion concerning what constitutes a real estate trust account, where trust accounts may be established, and how they should be established and managed.

IDAHO REAL ESTATE LICENSE LAW

54-2041. Trust Accounts and Entrusted Property.

(1) A licensed Idaho real estate broker shall be responsible for all moneys or property entrusted to that broker or to any licensee representing the broker.

(2) Immediately upon receipt, the broker shall deposit entrusted moneys in a neutral, qualified trust fund account in Idaho, and shall properly care for any entrusted property.

(3) Only moneys relating to a regulated real estate transaction may be deposited in the broker's real estate trust fund account. Entrusted moneys shall not be commingled with the moneys of the broker, firm or agent, except for that minimum amount that may be required to open and maintain the trust account or as otherwise allowed by subsection (7) of section 54-2042, Idaho Code.

(4) The real estate broker shall remain fully responsible and accountable for all entrusted moneys and property until a full accounting has been given to the parties involved.

54-2042. Creation of Non-Interest-bearing Trust Accounts – Requirements.

A broker may establish one (1) or more real estate trust accounts but each account must meet all requirements of this chapter, including the following:

(1) Each trust account must be established at an approved depository, which must be located in the state of Idaho, and must be noninterest-bearing, except as allowed in section 54-2043, Idaho Code, or as otherwise may be provided by law. Approved depositories are state or federally chartered banks and trust companies, state or federally chartered savings and loan associations, properly licensed title insurance companies in Idaho, or an actively licensed attorney at law in Idaho.

(2) Each account must be identified by the term "real estate trust account," on checks, deposit slips, and with the depository.

(3) Each trust account must be established and maintained under the licensed business name of the broker, and shall be under the full control of the broker.

(4) Each broker trust account must have a separate and complete set of records, which must consist of a monthly accounting, deposits, charges, and withdrawals or checks, even if the moneys are on deposit with a title company, attorney or other approved depository. The broker is responsible for ensuring that these separate account records are provided by the depository.

(5) Funds deposited in a real estate trust account must be subject to withdrawal on demand at the order or direction of the broker at all times, even if deposited with a title company or other approved depository.

(6) A Commission-approved form giving notice of opening a trust account and giving authorization for the Commission to inspect the account must be completed for each trust account, signed by the broker and an officer of the bank or depository and returned to the Commission.

(7) No deposits to the trust account shall be made of funds that belong to the broker or real estate firm, except that the broker may deposit broker or firm funds for the purpose of opening and maintaining the account and for the payment of anticipated bank service charges for the trust account. In no event shall the balance of broker or firm funds in the account exceed three hundred dollars (\$300). Maintenance funds shall not be disbursed for any purpose other than to cover bank charges charged directly to the trust account by the bank.

(8) An entity not specified as an approved escrow depository in subsection (1) of this section, may be accepted and approved by the Commission as an escrow depository upon disclosure of the following:

- (a) The details of the entity's financial structure;
- (b) The amount and terms of Errors and Omissions insurance and any bonding;
- (c) A copy of the entity's last audit and financial statement;
- (d) A copy of any license or certificate issued to the entity; and
- (e) Any other information which will help the Commission make its determination.

54-2043. Interest-bearing Trust Accounts. The broker may deposit funds in a separate, interest-bearing trust account for a single transaction if directed in writing by both parties to the transaction, and only if the following additional requirements are met:

(1) The interest-bearing trust account must be established in accordance with all requirements in section 54-2042, Idaho Code. However, the interest-bearing trust account shall be created at an approved depository in Idaho.

(2) The deposit shall be made in the name of the broker, as described above, and each such account shall contain only the funds relating to one (1) transaction.

(3) The interest-bearing trust account, when created for this purpose, must allow for withdrawal of the funds upon the broker's demand, unless all parties direct the broker in writing to do otherwise.

(4) There must be a written agreement signed by both the buyer and the seller stating who is to receive the interest accrued from the deposit. This agreement is to be retained by the responsible broker in the transaction file with a copy given to the buyer and the seller.

When a trust account is established the account must be in the licensed business name of the broker, must be identified as a "real estate trust account", and the FUNDS MUST BE SUBJECT TO WITHDRAWAL ON DEMAND BY THE BROKER. The broker may authorize others to sign trust account checks and withdraw funds, but the broker is held strictly responsible and accountable for the funds on deposit.

When a broker establishes a trust account with a title company the same principles apply. The trust account must be established in the licensed business name of the broker and the broker must retain control of the funds until a full accounting is made with the buyers and sellers. If the title company requires approval from some other person or persons prior to releasing the funds, then the broker has relinquished control and is not properly accounting for the funds as required by the *Idaho Real Estate License Law and Rules*.

Regardless of where the broker establishes a real estate trust account, the broker is required to notify the Commission on a form entitled "Notice of Opening a Trust Account" and includes the "Agreement & Authorization to Inspect". This form must be signed by the broker and by an officer of the trust account depository.

In the event of a co-op transaction, the funds may be placed in the listing or selling broker's trust account if the purchase and sale agreement specifies that the listing or selling broker is to be responsible for holding the funds. (section 54-2048, Idaho Code)

If the buyer and seller refuse to place the funds with the broker and want the earnest money or other funds placed with someone other than the broker, the broker must advise all parties in writing that (1) the broker has not receipted for any funds, (2) the broker has no control over the funds, (3) the transaction is being handled in a manner contrary to standard practice, and (4) the parties are fully responsible for the deposit and access to the funds. In these situations, the broker must never handle the funds in any manner.

Note: Refer also to Guideline #8 - Approved Escrow Holders